Supreme Court, U.S.
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No. 99-1729

In The

Supreme Court of the United States

UNIVERSE SALES CO., LTD.,

Petitioner,

v.

OFFSHORE SPORTSWEAR, INC.,
SILVER CASTLE, LTD., and
OFFSHORE OF CALIFORNIA, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CORPORATE DISCLOSURE STATEMENT

Respondents Offshore Sportswear, Inc., Silver Castle, Ltd., and Offshore of California, Inc., each has no parent corporation, and no publicly held company owns ten percent or more of the stock of any Respondent.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Respondents Offshore Sportswear, Inc., Silver Castle, Ltd. and Offshore of California, Inc. (collectively "Sportswear/OCI"[1]) respectfully submit this Brief In Opposition to the Petition for Certiorari filed by Petitioner Universe Sales Co., Ltd. ("Universe") seeking review of the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

I. BRIEF STATEMENT

Petitioner Universe seeks to construct grounds for the extraordinary remedy of review on certiorari by fundamentally mischaracterizing the basis for and the precedential effect of the decision by the court of appeals (Judge Brunetti for the majority, joined by Judge Nelson, Judge Ferguson dissenting) which reversed the district court's order granting summary judgment for Universe. Universe argues that the decision establishes a rule which, in effect, prohibits a federal court from rejecting uncontradicted expert declaration testimony on a question of interpretation of foreign law. Universe builds upon this false premise to argue that the court of appeals decision conflicts with the holding in *Trans Chem., Ltd. v. China Nat'l Mach Import & Export Corp.*, 161 F.3d 314 (5th Cir. 1998).

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[1] For clarity, we will adopt the defined identification of the Respondents used by Universe in its Petition.

In presenting its argument, Universe echoes an objection first voiced in the dissenting opinion below. However, the majority opinion itself squarely confronts and cogently dispels this clearly mistaken reading of its reasoning. The majority demonstrates that the facts in *Trans Chem* are readily distinguishable from the instant case, and that the decision here in fact is not, and is not intended to be, at odds with *Trans Chem* in any way.

What the majority does decide is that on the unique facts and the record presented in this case, the trial court clearly erred when it granted summary judgment for Universe based on a reading of Japanese law which (1) was directly and categorically controverted by competent, admissible, unrebutted expert declaration testimony on point, and (2) which was absolutely unsupported, and unsupportable, based on any evidence relied upon or legal analysis articulated by the trial court.

This decision thus does not conflict with precedent in any other circuit, or otherwise leave open for further proceedings any question of such fundamental importance, as to warrant the exceptional procedure of review on certiorari under Rule 10, Rules of the Supreme Court of the United States. Universe made essentially the same arguments in support of its Petition for Rehearing *En Banc* in the Ninth Circuit, which Petition was denied. In the interests of judicial economy and fairness to the parties, Universe's Petition for Certiorari should likewise be denied.

II. THE COURT OF APPEALS DECISION IS CORRECT ON THE LAW AND THE RECORD, AND PRESENTS NO CONFLICT WITH ANY PRIOR APPELLATE DECISIONS, SO THAT REVIEW ON CERTIORARI IS NEITHER NECESSARY NOR APPROPRIATE

A. Summary of the Ninth Circuit's Decision

The issue before the trial court in this action was whether Universe was legally obligated to pay royalties to Sportswear/OCI pursuant to a written trademark license agreement initially entered into between Universe and a company known as Daystar of California, Inc. ("Daystar").

Universe unconditionally acknowledges that the original Daystar/Universe license agreement was valid and enforceable. (See Petition, p. 14: "The issue is not the validity and enforceability of the license agreement, which Universe has never challenged.") And the record establishes without contradiction that Daystar assigned to Sportswear/OCI its right to receive the royalties payable by Universe under the license agreement. (See the uncontradicted testimony at ¶¶ 4 and 5 of the Declaration of John Bernards III, President of Daystar, and at ¶ 5 of the Declaration of George Kazantsis, President of Sportswear/OCI, at Respondents' Appendix ("App.") annexed hereto, page App. 4; 12-13.)

Given the uncontroverted facts that (1) Universe enjoyed and fully exploited the benefits of an admittedly valid and enforceable trademark license, and (2) the contractual right to receive the royalties accruing under the license agreement was validly transferred by Daystar to

Sportswear/OCI, it defies logic, and confounds any concept of equity, to suppose that Universe would not be obligated to pay the royalties due under the license agreement to the party lawfully entitled to receive them – Sportswear/OCI. Indeed, the trial court observed on multiple occasions that "You're [Universe] going to have to pay this to somebody. You can't just simply not pay it." App. 2. Of course, the only possible "somebody" is Sportswear/OCI, as Daystar dissolved through bankruptcy nearly twenty years ago following transfer of all its rights to Sportswear/OCI.

But Universe argued for precisely such a result, based on the proposition that under Japanese trademark law, the assignment of ownership of a registered trademark is only valid if the transfer itself is recorded on the trademark register of the Japanese Patent Office (the "POJ"). By framing this uncontroversial point of Japanese trademark law as "the issue in dispute," Universe misled the trial court into rendering a decision which accomplished precisely the unjust result which that court had itself decried – it freed Universe from the obligation to pay royalties to anyone.

In its enlightened reversal of this miscarriage of justice, the court of appeals correctly perceived the fatal flaw in the lower court's analysis, to wit: the district court answered the wrong question. The question the trial court answered was, can Sportswear/OCI lawfully establish ownership of the Japanese trademarks if it has not perfected the assignment of such ownership by scrupulous compliance with every POJ recordation formality?

But it is clear that the question genuinely in dispute is different. It is: Must Universe pay the royalties owed under the admittedly valid license agreement to the party specified by its original licensor? This is a clearly distinguishable question, and it is clearly susceptible of a different answer than the first. In other words, assuming for argument that Sportswear/OCI's title to the trademarks is vulnerable vis-a-vis an adverse claim of ownership because it has not fully complied with all recordation formalities, is not Sportswear/OCI nonetheless entitled to be paid the royalty amounts owed by Universe under the admittedly valid license agreement so long as Daystar has lawfully assigned to Sportswear/OCI the contractual right to receive those funds? The answer to this question is absolutely yes.

In reaching a contrary conclusion, the trial court simply disregarded, without comment or analysis, the unrebutted declaration testimony of Japanese trademark law expert Mitsuhiro Kamiya, which establishes that under Japanese law, an otherwise enforceable contractual assignment of the right to receive royalties is entirely valid irrespective whether a concomitant assignment of ownership of the underlying trademark has been duly recorded. (See Kamiya Declaration, ¶¶ 6, 7, 8, Petitioner's Appendix ("A") pages A45-A48.)

Universe has not offered a scintilla of evidence, nor has it identified any provision of Japanese law, which remotely supports the conclusion that (supposed) defects in the recordation of Sportswear/OCI's title to the assigned marks forfeits its entitlement to receive the royalties which Universe concededly owes under the license agreement. Nor did the district court identify any such

authority through its own research. Rather, the court simply adopted Universe's patently erroneous premise that perfection of title as a matter of trademark law is a condition precedent to recovery of assigned license royalties as a matter of contract law.

In reversing the lower court's decision, the court of appeals plainly did not rule, as Universe wrongly asserts, that a trial court is bound blindly to accept foreign law declaration testimony merely because it is unrebutted. Rather, the majority pronounced the sound and uncontroversial proposition that if competent, persuasive and adequately authenticated declaration testimony on the controlling point of foreign law is presented, a trial court must have at least a cogent, articulable basis to reject that authority and to enter summary judgment contrary to it.

In this case, the record is utterly devoid of any such analysis and reasoned rejection of the Japanese law presented by Sportswear/OCI. The district court did not evaluate the strengths and weaknesses of Sportswear/OCI's evidence of Japanese law and conclude that the countervailing evidence presented by Universe, or such evidence ascertained by the court, was more persuasive – Universe did not present, nor did the court ascertain, any such countervailing evidence.

Indeed, a careful review of the references to the record included in Petitioner's Appendix discloses that none of the statutes, rules, or treatises relied upon by Petitioner, and certainly not the unverified, non-evidentiary "letter" opinions of Japanese attorney Kazuo Takenchi which Petitioner reproduces (A35-41), directly or even inferentially rebut or challenge the validity of

Respondent's Japanese legal expert Kamiya's categorical statement that the contractual assignment of the right to receive royalties from Daystar to Sportswear/OCI is fully enforceable under Japanese law whether or not the contemporaneous assignment of trademark ownership has been perfected on the records of the Japanese Patent and Trademark Office. In short, Petitioner has failed to point to anything in the record that supports reversal of the Ninth Circuit's decision, and therefore review on certiorari is manifestly unwarranted.

B. This Case Does Not Meet The Stringent Standards Required To Warrant Review On Certiorari

While Petitioner includes a claim that review on certiorari is justified on the ground that the court of appeals decision is erroneous, that argument is both incorrect, as the foregoing discussion has demonstrated, and perhaps more important, it is facially insufficient under Supreme Court Rule 10. The sole argument advanced in support of review on certiorari that could conceivably warrant such relief is Petitioner's claim that the Ninth Circuit's decision conflicts with the decision of the Fifth Circuit in *Trans Chem., Ltd. v. China Nat'l Mach Import & Export Corp., supra.*

One need only read the majority's opinion to see that it makes no such ruling, and creates no such conflict:

> The dissent contends that our opinion conflicts with the case of *[Trans Chem. Ltd.]*. To the contrary, that case is easily distinguished. In *Trans Chem.*, the district court analyzed numerous materials in its effort to ascertain Chinese law

> on the relevant issue. . . . After analyzing the expert testimony and performing its own research, the district court reached a conclusion as to the meaning of Chinese law. Here, in contrast, there is no indication in the record that the district court performed anything close to such careful and extensive analysis, as the dissent would have us believe. The district court did not, before making its determination regarding the relevance and meaning of Japanese law, analyze Kamiya's argument regarding Japanese contract law*, encourage Universe to submit anything to counter Kamiya's argument, or perform any independent research on the issue. This case is simply different than *Trans Chem.*
>
> [fn*] We can find no indication in the record, at least, that the district court considered that portion of the declaration. The district court, it appears, decided early on that Japanese trademark law applied, and then never strayed from that reasoning.

It is perfectly apparent that the Ninth Circuit's decision neither suffers from the deficiencies nor gives rise to the conflict with precedent which Universe conjures up as grounds for review on certiorari. Its petition should be denied.

III. CONCLUSION

The Ninth Circuit's decision is well-reasoned, articulately presented, and unquestionably correct. It has corrected what was in fact an injustice effected by the district court's incomplete and incorrect reasoning and ruling. It does not threaten any constraint whatsoever

upon the authority and discretion of the district courts to conduct a thorough exploration of all available authorities and resources when called upon to interpret and apply foreign law. Indeed, it represents a call to the district courts to fulfill precisely that obligation. By no means does the decision state or imply, nor could it conceivably be cited as authority for the proposition, that a district court must blindly accept expert declaration testimony on a point of foreign law merely because no rebuttal declaration has been submitted.

There simply is no basis or justification whatsoever to order review on certiorari, and we respectfully call upon this honorable Court to deny the Petition.

DATED: May 30, 2000

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE GARY L. TAYLOR, JUDGE PRESIDING

UNIVERSE SALES CO., LTD., Plaintiff, VS. OFFSHORE SPORTSWEAR, INC., et al., Defendants.	Case No. SA CV 95-932-GLT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

Monday, February 3, 1997

* * *

[30] practice you can reserve those issues. I don't think you can in a summary judgment. You either say that that's disputed or not disputed.

And I don't believe that Mr. Wolff has said, "I dispute that the consent of Mr. Takase and the assignment of that document has to be recorded in Japan under California law and that was done." I don't believe he says that, and I don't believe he will tell you that that took place.

He may tell you there is estoppel or waiver or any kind of other things, but he's not suggesting that that's what happened.

THE COURT: Let's just digress for just one moment of other inquiry here.

It may not be relevant to our case at all, but just let me ask you. Why did you wait until now? What brings this to a head now? What's going on here?

MR. ROBERTS: Well, again, your Honor, there's been bankruptcy – a number of bankruptcies that have been filed by all of the different parties.

THE COURT: You're going to have to pay this to somebody. You can't just simply not pay it. I presume what you're doing, if you're not paying Universe, is you're probably putting this in an interest-bearing account of some kind to decide who [31] eventually, rightfully gets paid, correct?

MR. ROBERTS: I'm unaware of what Japan is doing, your Honor. I'm simply aware of the fact that they're obviously not obligated to pay someone that doesn't have anything that requires them to pay.

THE COURT: You're going to be obligated to pay somebody. Is Daystar or Mr. Takase coming back at your folks and saying, "Don't pay these guys, pay me"?

MR. ROBERTS: I don't think that Daystar, uh, is in existence any longer, your Honor, so I doubt Daystar is.

Mr. Takase obviously has that right. Whether or not he's exercised that right, I don't know.

THE COURT: Well, presumably – have you been paying Mr. Takase for his other half of the ownership?

MR. ROBERTS: I don't know the answer to that, your Honor.

THE COURT: Or paying it all to Universe?

MR. ROBERTS: I don't know the answer to that. Is, again, it may very well be that it's not due anyone given the fact that there has been an attempted – or there's been an assignment that may result in a breach of the agreement. But again –

THE COURT: What brought this all up? What

* * *

DECLARATION OF GEORGE KAZANTZIS

George Kazantzis declares:

1. I am the president of defendants Offshore of California, Inc. ("OCI"), Offshore Sportswear, Inc., and Silver Castle, Ltd. I make this declaration in opposition to the summary judgment motion of Universe Sales Co., Ltd., ("Universe") and in further support of the cross motions for summary judgment. Based on personal knowledge I can competently testify to the facts below.

(Joint Ownership of Trademarks)

2. I am informed and believe that on or about October 7, 1981, Daystar of California ("Daystar"), a California corporation and Yasuo Takase ("Takase"), an individual citizen of Japan, entered into a Joint Ownership Agreement regarding the joint ownership of several Trademarks in Japan including the Offshore Trademark and the Sun Over Sea Trademark ("Trademarks"). A copy of the Joint Ownership Agreement is attached as **Exhibit "1."**

(License Agreement)

3. I am informed and believe that on or about January 1, 1987, Daystar, Takase, and counter-defendant Universe Sale Co., Ltd. ("Universe") entered into an Exclusive License Agreement ("License Agreement") regarding Universe's right to be the exclusive licensee of the Trademarks in Japan, for mens and boys apparel. A copy of the License Agreement is attached hereto as **Exhibit "2."**

4. On or about April 18, 1987, Daystar and Universe renewed the License Agreement for an additional five year term to commence on January 1, 1992 and end December 31, 1996. Thus, pursuant to the terms of the License Agreement, Universe has been from 1987 through 1996 the exclusive licensee of the Trademarks in Japan for mens and boys apparel.

(Assignment from Daystary to OCI)

5. On December 10, 1987, Daystar assigned, sold and transferred to OCI, all of its rights, title, and interest to the Trademarks, including the License Agreement. OCI paid valuable consideration for the assignment. A copy of the Assignment from Daystar to OCI of the Trademarks is attached as **Exhibit "3."**

(Ownership of OCI)

6. At the time of Daystar's assignment, OCI was owned 100% by its president at the time, Steve MacBaisey. On or about November 30, 1988, Mr. MacBaisey sold his interest in OCI to an investment group that included Merril Lynch Interfunding. The investment group was known as Cycle Industries, Inc. On October 10, 1990 Cycle Industries officially changed its name to Pacific Outlook Sportswear, Inc.

7. Pacific Outlook filed for Chapter 11 bankruptcy protection on July 22, 1993. It was out of that bankruptcy that my partners and I acquired OCI, pursuant to court order approving the sale of Pacific Outlook's assets.

8. Pacific Outlook's assets included all 10,000 shares of OCI stock. OCI's assets included the "Off Shore" brand and "Sun Over Sea" logo (Trademarks) and various license agreements, specifically including the Exclusive License Agreement ("License Agreement") with Universe. Silver Castle, Ltd., acting as a nominee, acquired these assets pursuant to bankruptcy court order approving the sale "free and clear" of any liens, claims, and incumberances on January 26, 1994. Silver Castle then nominated Offshore Sportswear, Inc. ("OSI") as the new owner of OCI.

9. As set forth above, the owners of OCI have changed at various times over the years. At all times, however, OCI has remained a separate corporate entity, duly organized and existing under the laws of California. OCI also remains the licensor and joint owner of the Japanese Trademarks, by virtue of Daystar's 1987 assignment. As further discussed below, Universe and Takase have repeatedly acknowledged the assignment without objection, continuing their relationship will [sic] OCI as licensor and joint owner of the trademarks, including the payment of royalties to OCI for a number of years.

(Renewal of License Agreement)

10. On October 16, 1991, Universe wrote to Robert T. Santelli of Pacific Outlook (then corporate parent of OCI) confirmingthe renewal of the License Agreement. A copy of Universe's October 16, 1991 letter is attached as **Exhibit "4."** Further, on November 22, 1991, Mr. Santelli wrote Universe confirming again the renewal of the

License Agreement. A copy of Mr. Santelli's November 22, 1991 letter is attached as **Exhibit "5."**

(Takase has Consented to and Ratified the Assignment)

11. On or about June 6, 1994, Takase sent a letter to Silver Castle acknowledging OCI as a joint owner of the Trademarks. A copy of Takase's June 6, 1994 letter is attached as **Exhibit "6."**

12. On or about January 1, 1992, Surf Break, Inc., through its president Yasuo Takase, signed an Exclusive License Agreement ("Surf Break License Agreement") with OCI, wherein Surf Break would have the exclusive licensee to use the Trademarks in Japan on accessories such as luggage and sunglasses. At paragraph 1.4 of the Surf Break License Agreement, Takase confirms that OCI is a "joint owner" of the Trademarks. A copy of the Surf Break License Agreement is attached as **Exhibit "7."**

(Registration of Japanese Trademarks)

13. The License Agreement with Universe principally concerns two Japanese Trademark Registrations in Class 17 (mens and boys apparel): Registration nos. 1241239 and 1548748. OCI and Takase, as joint owners of the Japanese Trademarks, have jointly retained Fukami Patent Office to serve as their Japanese Trademark counsel, responsible for trademark registrations and renewals.

14. In what appears to be a breach of OCI's attorney-client relationship, Universe's counsel has been communicating with Fukami Patent Office, as evidenced by Mr. Hisao Fukami's letter of June 8, 1995 to Clifford W.

Roberts, Jr., a copy of which is attached as Exhibit "B" to Kenji Katase's moving declaration. In any event, Mr. Fukami's letter acknowledges that "Mr. Takase and *Off Shore of California, Inc.* are the current owners of Trademark Registration No. 1548758 in Class 17." In addition, the Fukami Patent Office letter of December 11, 1996, addressed to my counsel, references Trademark Registration No. 1241239 and states: "Mr. Takase has decided to file a renewal application together with your client, OCI ("Offshore of California, Inc."); and Fukami Patent Office "will file the renewal application for the subject Trademark Registration No. 1241239 in the name of OCI and Mr. Yasuo Takase. The expense is to be incurred in renewal, application will be split among OCI (50%) and Takase (50%). A copy of the June 8, 1995 and December 11, 1996 letters from Fukami Patent Office are attached as **Exhibit "8" and "9,"** respectfully.

(Universe has Enjoyed an Exclusive License)

15. During the term of the License Agreement, OCI refrained from licensing the Trademarks in Japan for mens and boys apparel, to other entities.

16. From 1987 through 1996, Universe was the exclusive licensee of the Trademarks in Japan for mens and boys apparel.

(Universe has Breached the License Agreement)

17. Pursuant to the License Agreement, Universe was required to pay OCI annual royalties of $60,000 or

3% of its gross price of all shipments, whichever is greater.

18. According to Universe's verified responses to OCI's Second Set of Special Interrogatories, Interrogatory No. 28 (attached to the Declaration of Joshua M. Wolff), Universe's gross sales for the years 1992 through 1996 were as follows: (1) 1992: $2,634,200; (2) 1993: $2,222,400; (3) 1994: $2,497,000; (4) 1995: $2,142,333; and (5) 1996: unknown.

19. Based on the foregoing sales figures, in 1992 Universe was contractually required to pay at least $79,026 in royalties, yet paid OCI only $60,000. In 1993, Universe was contractually required to pay at least $66,672 in royalties, yet paid OCI only $38,018. In 1994, Universe was contractually required to pay at least $74,910 in royalties, yet paid OCI only $38,293.09. I 1995, Universe was required to pay at least $64,269.00 in royalties, yet paid *nothing*. In 1996, Universe was contractually required to pay at least $60,000 in royalties, yet paid *nothing*.

20. In 1994, Universe purchased goods from OCI pursuant to paragraph 3(b) of the License Agreement. Universe has an unpaid balance due for this purchase totaling $19,008, plus interest. Universe has yet to pay OCI for those goods.

21. Due to Universe's breach OCI has been damaged in an amount in excess of $227,574.90.

I make this declaration under penalty of perjury under the laws of the United States of America on January 17, 1997.

/s/ George E. Kazantzis
George Kazantzis

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNIVERSE SALES, CO., LTD., a Foreign corporation, Plaintiff, v. OFFSHORE SPORTSWEAR, INC., a California corporation; SILVER CASTLE, LTD., a California corporation; GEORGE KAZANTZIS, an individual; ROBERT T. SANTELLI, an individual; GULU WATUMUL, an individual and shareholder of OSI and SILVER CASTLE; and DOES 1-25, inclusive, Defendants. AND ALL RELATED COUNTER-CLAIMS.	CASE NO. SACV95-932GLT(EEx) Assigned for All Purposes: The Hon. Gary L. Taylor Department 2 **DECLARATION OF JOHN BERNARDS, III** [Filed in Support of OCI's Position on Motions for Summary Judgment] (Filed Apr. 14, 1997) Date: May 12, 1997 Time: 10:00 a.m. Room: 2

I, John Bernards, III, declare:

1. I was the President of Daystar of California ("Daystar"), a California corporation from its incorporation on June 9, 1976 through its closing on October 3, 1988. As the President of Daystar, I have personal knowledgeable [sic] of the transactions involving Daystar assets, and can competently testify to the facts below.

2. As of January 1, 1987, Daystar along with Yasuo Takase ("Takase") were the joint owners of Japanese Trademark Registration Nos. 1,548,758 and 1,241,239 ("Trademarks"). In fact, as of January 1, 1987 Daystar and Takase were the registered owners of the Trademarks with the Japanese Patent Office.

3. On January 1, 1987, Daystar along with Takase and Universe Sales Co., Ltd. ("Universe"), entered into an exclusive license agreement ("License Agreement"). A true and correct copy of the License Agreement is attached hereto as Exhibit "1". Pursuant to the License Agreement, Universe became the exclusive licensee of the Trademarks for mens and boys apparel for a five (5) year period. In return, Universe was contractually obligated to pay Daystar royalties in the amount of three percent (3%) of its gross annual sales or $60,000 per year, whichever was greater. On April 15, 1987, the License Agreement was renewed for an additional five (5) year period, set to end on December 31, 1996. By its terms, the License Agreement was **"freely assignable"** by Daystar.

4. On December 10, 1987, Daystar assigned all of its "right, title and interest" in and to the Trademarks to Offshore to California, Inc. ("OCI") for good and valuable consideration. A true and correct copy of the written

assignment is attached hereto as Exhibit "2". In negotiating the assignment on behalf of Daystar, it was my intent and express purpose to assign all of Daystar's "right, title and interest" to the Trademarks to OCI, including the License Agreement with Universe. Assignment of the License Agreement was specifically discussed and understood by the parties to be included in the Assignment. No mention or effort was made to exempt the License Agreement from the Assignment.

5. Upon execution of the Assignment, all right to receive royalties under the License Agreement belonged to OCI. Daystar has made no demand for such royalties or interfered in any way with OCI's right to receive such royalties.

6. Approximately two years ago, I was approached by George Stapchulk at the Los Angeles MAGIC trade show. Mr. Stapchulk asked if I would be interested in "cooperating" with Universe Sales in its dispute with OCI regarding royalties. I was offered $15,000.00 for my cooperation. I considered the offer inappropriate, and I thus refused.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of April, 1997, at Irvine, California.

/s/ John Bernards, III
John Bernards, III